replevin would lie. *J. L. Price Brokerage Co.* v. *Chicago, etc. R. R.* (Mo. App. 1917) 199 S. W. 732.

Some American jurisdictions hold that the telegraph company is the agent of the offeror and that he is bound by mistakes in transmission. *Western Union Tel. Co.* v. *Flint River Lumber Co.* (1902) 114 Ga. 576, 40 S. E. 815. Other American jurisdictions follow the English rule that the telegraph company is not the agent of the offeror so as to bind him by mistakes in transmission, but is an independent contractor. *Henkel* v. *Pape* (1870) L. R. 6 Ex. 7; *Mount Gilead Cotton Oil Co.* v. *Western Union Tel. Co.* (N. C. 1916) 89 S. E. 21; see *Pepper* v. *Western Union Tel. Co.* (1889) 86 Tenn. 554, 11 S. W. 783. On principle, the latter view seems correct. 16 Columbia Law Rev. 617. Even on the assumption that the telegraph company is the agent of the offeror it is difficult to sustain the principal case. A party cannot accept an offer which he knows is a mistake, *Mummenhoff* v. *Randall* (1898) 19 Ind. App. 44, 49 N. E. 40, or which, in view of all the circumstances, he has good reason to believe is a mistake. *Harran* v. *Foley* (1885) 62 Wis. 584, 22 N. W. 837; see *Central R. R. of Ga.* v. *Gortatowsky* (1905) 123 Ga. 366, 51 S. W. 469. So if the mistake is apparent upon the face of the telegram or known to the receiver, he cannot hold the sender bound by its terms. *Germain Fruit Co.* v. *Western Union Tel. Co.* (1902) 137 Cal. 598, 70 Pac. 658; see *Central R. R. of Ga.* v. *Gortatowsky, supra.* With the market price approximating $1.35 per bushel, it would seem that it was apparent to the offeree, a brokerage firm, that the offer to sell at 35 cents per bushel was a mistake. *Cf. Mummenhoff* v. *Randall, supra.* Hence, no contract resulted and the tender of the price did not pass title. *Cf. Harran* v. *Foley, supra.*

EASEMENTS—ERECTION OF A SINGLE BUILDING BY A COMMON TENANT OF TWO ADJOINING LANDOWNERS.—A and B, owners of adjoining private dwellings, each separately leased to the same tenant, to whom each gave permission so to alter the buildings as to make a single building to be used as a hotel. When these leases terminated and more than twenty years before the present controversy, the landowners again separately leased to another single tenant. Subsequent leases to other single tenants were made without any agreement between the landlords. B, the defendant, now wishes to separate the building by putting up a partition wall. In an action to enjoin this proceeding, *held,* there was no easement of user in common, and the defendant could separate his portion. *Olin* v. *Kingsbury* (App. Div. 1st Dept.) 168 N. Y. Supp. 766.

The acquisition of easements by prescription depends upon an exercise of the right to a user by the owner of the dominant tenement, acquiesced in by the owner of the servient tenement, for a period which would give a right by adverse possession to realty. *Dalton* v. *Angus* (1881) 6 App. Cas. 740; Washburn, Easements and Servitudes (3rd ed.) 114. Moreover, the fact that such user was originally permissive, would not prevent the easement from arising, if there was a subsequent revocation and a claiming adversely known to the owner of the servient tenement. *Eckerson* v. *Crippen* (1888) 110 N. Y. 585, 18 N. E. 443; *Toney* v. *Knapp* (1906) 142 Mich. 652, 106 N. W. 552. Assuming, therefore, that in the principal case the right of user by one part of the house over the other part of the house began by permission such permission may be said to have terminated with the

original tenancy; and a subsequent lease by each owner individually to another common tenant was a lease of his respective portion of the house plus the rights of user over the other part, thus constituting a sufficient claim of right and notice. *Cf. Eckerson* v. *Crippen, supra.* The facts of the instant case would seem to justify the creation of easements on the further ground, that, since the parol permission to the common tenant to construct a single building over the two lots was in effect the parol grant of easements of heating, access, *etc.*, each owner would be estopped as against the other to deny the rights thus acquired after extensive improvements and alterations had been made. *Cf. Flickinger* v. *Shaw* (1890) 87 Cal. 126, 25 Pac. 268; see *Sanford* v. *Kern* (1909) 223 Mo. 616, 122 S. W. 1051. Furthermore, it has been held, on the analogy of the cases relating to the severance by the grantor of part of his tenement, that facts similar to those in the principal case would give rise to easements by implication. *Doe* v. *Morrell* (N. H. 1809) Smith 255; *Fronckowiak* v. *Platek* (1912) 152 App. Div. 301, 136 N. Y. Supp. 522; see *Foote* v. *Yarlott* (1908) 238 Ill. 54, 87 N. E. 62. The problem in the instant case is to deduce adverse user, estoppel, or an easement by implication, from facts which give no inexorable indication one way or the other. The injustice of enjoining absolutely the separation of the tenements, and thus making the parties tenants in common against their will, perhaps induced the court to refuse to recognize any easement. But this difficulty might have been obviated by granting the injunction subject to be dissolved on payment by the defendant for the improvements necessary to make the plaintiff's portion of the house relatively convenient as a separate dwelling. *Cf. Collins* v. *Buffalo Furnace Co.* (1902) 73 App. Div. 22, 76 N. Y. Supp. 420.

EMINENT DOMAIN—CONFIRMATION OF AWARD—SUBSEQUENT ABANDONMENT OF CONDEMNATION.—After an award of damages had been made and confirmed in condemnation proceedings instituted by the plaintiff water company to procure the defendant's land for its site, the plaintiff sought to abandon the proceedings. In an action by the plaintiff to enjoin the issuing of a distress warrant for the award, *held,* the property owner acquired a vested interest in the award. *York Shore Water Co.* v. *Card* (Me. 1917) 102 Atl. 321.

It is generally asserted that in the absence of statutory provisions eminent domain proceedings may be abandoned at any time before the rights of the parties have become mutually fixed. See *Matter of Rhinebeck & Conn. R. R.* (1876) 67 N. Y. 242; *St. Louis, etc. R. R.* v. *Cape, etc. R. R.* (1907) 126 Mo. App. 272, 102 S. W. 1042; *Nixon* v. *Marr* (C. C. A. 1911) 190 Fed. 913. But there is a diversity of opinion as to the stage of the proceedings at which the rights of the parties become reciprocally vested. The weight of authority seems to be that the condemnor may abandon the proceedings at any time before the payment of the award, *Chicago* v. *Barbian* (1875) 80 Ill. 482; *Pool* v. *Butler* (1903) 141 Cal. 46, 74 Pac. 444; *Cunningham* v. *Memphis Term. Co.* (1912) 126 Tenn. 343, 149 S. W. 103, on the ground that the condemnor should be allowed to decide whether it wishes to take the property at the price fixed by the award. See *O'Neill* v. *Freeholders of Hudson* (1879) 41 N. J. L. 161. On the other hand, it has been held that the confirmation of the award has the effect of a judgment reciprocally vesting the rights of the parties and that thereafter the right to discontinue the proceedings is ter-